82-866

NO._____

Office - Supreme Court
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ALEXANDER L. STEVAS,
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IN THE SUPREME COURT

OF

THE UNITED STATES

OCTOBER TERM, 1982

MARY VAUGHN

PETITIONER,

VS.

HINCHY, WITTE, WOOD, ANDERSON, HODGES & BOSTWICK

LAW FIRM

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY VAUGHN, PRO SE
1119 TWENTY-EIGHTH STREET
SAN DIEGO, CALIFORNIA 92102
TELEPHONE: 619/233-0505

QUESTION PRESENTED

(1)

Was it in the interests of substantial justice for the District Court to dismiss plaintiff's complaint without leave to amend and with prejudice, on jurisdiction grounds, when facts alleged in the complaint might have supported a cause of action within the jurisdiction of the District Court? (D.C. No. 1053)

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In determining whether subject matter jurisdiction exists, the court will construe the complaint broadly. If there are any facts from which jurisdiction might be inferred, the motion should be denied. (Thomson v. Gaskill, 315 U.S. 442 (1942).	10
Complaint should not be dismissed merely because plaintiff's allegations do not support particular legal theory he advances, nor should complaint be dismissed that does not state with precision all elements that give rise to legal basis for recovery or merely because court doubts that plaintiff will prevail in action. Bremlet v.	11

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If complaint states any claim on which plaintiff might possibly recover, complaint should not be dismissed without trial or motion for summary judgment. (Sunbeam Corp. v. Payless Drug Stores (1953 D.C. Cal) 113 F Supp. 31.) 11

Complaint must be construed in light most favorable to plaintiff, and motion to dismiss should not be granted it if is reasonably conceivable that plaintiff may establish a cause of action. (Cohen v. United States (1942 CA 8 Minn.) 129 F 2d 733.) 12

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Pro se civil rights complaint is to be liberally construed; moreever, motion to dismiss (prisoner's) rights, action for failure to state claim is subject to very strict standard of review. (United States ex. rel. Smith v. Robinson, (1980, Ed. PA.) 495 F Supp. 696). 12

Plaintiff appearing pro se deserves to have complaint reviewed by less stringent standard then when drafted by lawyer. (Morpurgo v. Board of Higher Education (1976, DC NY) 423 F Supp. 704.) 12

Allegations in a complaint are to be accepted as true for purposes of considering a motion to dismiss under Rule 12 (b). Hochman v. BOARD OF EDUCATION (1976 CA 3 N.J.). 534 F 2d 1094.) 12

NUMBER _____

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PETITIONER

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STATUTES

UNITED STATES CODE: FEDERAL RULES OF CIVIL PROCEDURE, RULE 8 (f)

PETITION FOR A WRIT OF CERTIORARI

To the United States District Court, Southern District of California and the United States Court of Appeals for the Ninth Circuit

THE PETITIONER, MARY VAUGHN, respectfully prays that a Writ of Certiorari issue per-

mitting her to file an amended complaint, with the assistance of counsel in the United States District Court, Southern District of California, in the matter of Mary Vaughn, Petitioner

vs.

Hinchy,Witte,Wood,Anderson,Hodges, and Bostsi dk Law Firm.

Docket Number 80-1053.

OPINION BELOW

The Memorandum of the Court of Appeals (Ninth Circuit), in this matter, appears in the appendix hereto. (EXHIBITS A.B.C & D)

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on May 28, 1982, and its Order denying a petition for rehearing was entered on July 28, 1982. A petition for an extension of time within which to file this Petition was timely filed and an extension of time of thirty days beyond the ninety day period of time was granted by this Court on October 19, 1982, extending time to and including November 24, 1982. (EXHIBIT - A)

Jurisdiction for this petition arises under the Federal Rules of Civil Procedure, Rule 8 (f) which governs the construction of pleadings in the interest of justice.

PARTIES

The sole party plaintiff is Mary Vaughn.

The party's defendants are: Hinchy,Witte,Wood,Anderson,Hodges and Bostwick Law Firm and their address is:
3200-4th. Avenue
San Diego, California 92013

STATUTORY PROVISIONS INVOLVED

Federal Rules of Civil Procedure (Rule 8 (f).

Federal Rules of Civil Procedure, (Rule 12 (b).

STATEMENT OF THE CASE

In 1976, Petitioner, Mary Vaughn, hired the defendant/respondent law firm, Hinchy,Witte,Wood,Anderson,Hodges and Bostwick, to represent her and to pursue her interests in a case against a company that had fraudulently sold her goods. The Hinchy law firm failed to file a timely action against the offending company, thus losing her cause of action; and they further engaged in other conduct towards petitioner that

caused her financial harm and damage, in particular, forcing her into a filing in Bankruptcy that was both unnecessary, fraudulent, and against her will. The bankruptcy matter was finally dismissed in 1980 when petitioner refused to sign the statement of creditors which she claimed was false and fraudulent.

Petitoner attempted to discharge the Hinchy firm as her attorneys, but they would not be fired; she made many attempts to hire other counsel to replace them, but this was not successful and even after the Hinchy firm dismissed itself as her attorneys of record, following the bankruptcy dismissal, she was thwarted in every attempt to hire an attorney in San Diego County, California, who would pursue her claim for damages and judicial relief against

the respondent, Hinchy, Witte, Wood, Anderson, Hodges, and Bostwick Law Firm.

(The affidavit of Mary Vaughn filed with this Court in support of her request for extension of time, and which is set forth in the appendix hereto describes her attempts to obtain legal counsel, appendix - EXHIBIT E page 1 and following).

Petitioner was forced to defend herself and thus was compelled, not of choice, to sue and file her complaint against defendant/respondents as her own attorney, in pro se.

The lawsuit filed in pro se alleged malpractice, false billing, and a violation of civil rights. The complaint prepared by petitioner was noticably without proper form and contained excessive berbage and rhetoric. However, the facts upon which she leased claims for

relief were duly alleged and recited. The causes of malpractice and false billing were and are outside the subject matter jurisdiction of the Federal District Court since they are civil matters and the case was without diversity of citizenship. The facts alleged as violating her civil rights, a conspiracy between federal judges and defendant attorneys did not fall within the jurisdiction of the federal civil rights legislation cited; namely Title 42, section 1983. Hence petitioner's complaint was properly dismissed for lack of jurisdiction in light of the federal civil rights legislation cited.

However, and nonetheless petitioner's complaint alleged that a conspiracy existed between the Hinchy, Witte,Wood,Hodges,Anderson and Bostwick

Law Firm and federal judges to deny her access to the courts. At no time does the Order of the District Court dismissing her complaint (See Appendix, D- 1), or the Memorandum or Order of the Ninth Circuit Court of Appeals (see Appendix B-1 & C-1) suggest that the facts alleged in petitioner's complaint were frivolous.

The statement of the case and facts as set forth in the Ninth Circuit Court's Memorandum is correct. (See Appendix C-1)

The Order of the Federal District Court, Southern District of California, was that plaintiff/petitioner's complaint be dismissed with prejudice, and without leave to amend. (EXHIBIT D-1)

Petitioner believes that the facts alleged in her complaint that she was denied access through the courts by a conspiracy, believes the respondent Hinchy,Witte,Wood,Anderson, Hodges and

Bostwick Law Firm and the federal judges if true, would have given her a right to judicial relief of some sort; and that if the judicial relief she was entitled to did not fall within the protection of the civil rights rules she innocently and ignorantly relied on, then she should have been permitted by the District Court to amend her complaint, if possible, to cite a rule or theory of relief that was proper and acceptable.

ARGUMENT AND REASONS FOR GRANTING THE WRIT

Petitioner alleged in her complaint that she was denied access to the courts because of a conspiracy between the Hinchy,Witte,Wood,Anderson,Hodges and Bostwick Law Firm and federal bankruptcy judges. If the allegations be true, as

they must be assumed to be for these purposes, surely petitoner is entitled to some form of judicial relief in the federal courts. If not on a theory of denial of civil rights as petitioner claimed, then upon some other theory of relief. She should be permitted to amend her complaint, in the interests of justice, to set forth such other and proper theory of relief acceptable to the federal courts. And such is the policy of federal procedural justice.

All pleadings shall be so construed as to do substantial justice. (Rule 8 (f) Federal Rules of Civil Procedure).

In determining whether subject matter jurisdiction exists, the court will construe the complaint broadly. If there are any facts from which jurisdiction might be inferred, the motion should be denied. (Thomson v. Gaskill, 315 U.S. 442 (1942).

Complaint should not be dismissed merely because Plaintiff's allegations do not support particular legal theory he advances, nor should complaint be dismissed that does not state with precision all elements that give rise to legal basis for recovery, or merely because court doubts that plaintiff will prevail in action. Bremlet v. Wilson(1974 Ca 8 Ark.) 495 F2d 714, (Disagreed with Ingraham v. Wright (1974, CA 5 FIM.) 525 F2d 909, affd. 430 U.S. 651, 51 L.Ed. 2d 711, 97 S.Ct. 1401.)

If complaint states any claim on which plaintiff might possibly recover, complaint should not be dismissed without trial or motion for summary judgment. (Sunbeam Corp. v. Payless Drug Stores (1953 D.C. Cal.) 113 F Supp. 31.)

Complaint must be construed in light most favorable to plaintiff, and motion to dismiss should not be granted

if it is reasonably conceivable that plaintiff may establish a cause of action. (Cohen v. United States (1942 CA 8 Minn.) 129 F 2d 733.)

Pro se civil rights complaint is to be liberally construed; moreover, motion to dismiss (Prisoner's) rights, action for failure to state claim is subject to very strict standard of review. (United States ex. rel. Smith v. Robinsen (1980, Ed PA.) 495 F Supp. 696.)

Plaintiff appearing pro se deserves to have complaint reviewed by less stringent standard than when drafted by lawyers. (Morpurgo v. Board of Higher Education (1976, DC NY) 423 F Supp. 704.)

Allegations in a complaint are to be accepted as true for purposes of considering a motion to dismiss under Rule 12 (b). Hochman v. Board of Education (1976 CA 3 NU). 534 F 2d 1094.)

CONCLUSION

For the foregoing reasons, petitioner respectfully prays that a Writ of Certiorari should issue permitting her to file an amended complaint in the Federal District Court, with the advice, counsel, and participation of an attorney in good standing of the Bar Association of the State of California.

Respectfully submitted,

Mary Vaughn

Mary Vaughn
Petitioner

DATED: November NOV 22 1982 1982

Appendix follows:

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C. 20543

DECLARATION OF SERVICE BY MAIL

I, MARY VAUGHN AM EMPLOYED IN THE CITY OF SAN DIEGO, CALIFORNIA @ 1119 - 28TH STREET, SAN DIEGO, CALIFORNIA. I SERVED THE FOLLOWING DOCUMENTS TO THE OPPOSING COUNSEL:

-3 COPIES OF PETITION FOR HEARING FOR WRIT OF CERTIORARI: MARY VAUGHN, PETITIONER, VS. HINCHY/WITTE LAW FIRM

TO: AULT, MIDLAM & REYNOLDS LAW FIRM (FOR RESPONDENTS)
5030 CAMINO DE LA SIESTA, ROOM 201
SAN DIEGO, CALIFORNIA 92108

I THEN SEALED THE ENVELOPE, AND WITH THE POSTAGE THEREON FULLY PREPAID, DEPOSITED THE ENVELOPE IN THE UNITED STATES MAIL AT SAN DIEGO, CALIFORNIA, ON NOVEMBER NOV 22 1982 1982.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON NOVEMBER NOV 22 1982 1982 @ SAN DIEGO, CALIFORNIA.

Mary Vaughn PETITIONER
PRO SE, MARY VAUGHN